IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 17516 of 2005(I)

PETITIONER:

M.GANGADHARAN, AGED 52 YEARS,
S/O.LATE P.P.N.NAIR, SR. MANAGER,
M/S. AKOLA AYURVEDICS, 13/57-A, CALICUT TIMES COMPLEX, RAILWAY STATION LINK ROAD,
CALICULT-673 002.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS:

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1. **SRI.ADHIKARI BROTHERS TELEVISION NETWORK LTD., ADHIKARI CHAMBERS, OBEROI COMPLEX, NEW LINK ROAD, ANDHERI WEST, MUMBAI-400 053, REPRESENTED BY ITS AUTHORISED REPRESENTATIVE AND LEGAL MANAGER, MR.VIJAY DEVRURKAR.**

2. **STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. SHYSON P.MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.17516/2005 I

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE SUMMONS AND COMPLAINT IN CC NO.955/SS/05 OF THE METROPOLITAN MAGISTRATE 10TH COURT, ANDHERI, MUMBAI.**

EXT.P2: **COPY OF CHEQUE BEARING NO.003009 DTD. 10/06/2004 OF ALLAHABAD BANK, CALICUT.**

EXT.P2(A): **COPY OF CHEQUE BEARING NO.003010 DTD. 20/06/2004 OF ALLAHABAD BANK, CALICUT.**

EXT.P2(B): **COPY OF CHEQUE BEARING NO.003011 DTD. 30/06/2004 OF ALAHABAD BANK, CALICUT.**

EXT.P3: **COPY OF THE LEGAL NOTICE DTD. 19/07/2004 ISSUED ON BEHALF OF THE 1ST RESPONDENT.**

EXT.P4: **COPY OF THE REPLY TO EXT.P3.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.17516 of 2005

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Dated: 20th July, 2007

JUDGMENT

Heard counsel for the petitioner and the Public Prosecutor.

2. The grievance of the petitioner is that he has been implicated as third accused in a private complaint filed by the first respondent before the Metropolitan Magistrate, 10th Court at Andheri, Mumbai. Ext.P1 is copy of the complaint and it is stated that the first accused M/s.Chakola Ayurvedics is a proprietory concern and that the 2nd accused Mr.Paul Chakola is the sole proprietor. It is also conceded that the 2nd accused is the authorised signatory of the dishonoured cheques. But it is on the allegation that the third accused-petitioner is also in charge of and responsible for the acts of accused No.1 that the petitioner was also implicated. The materials placed on record by the petitioner will show that the petitioner was only the Senior Manager of M/s.Chakola Ayurvedics, the 1st accused, which is concededly a proprietory concern. The cheques in question are seen drawn by the 2nd accused who was the Proprietor of the first accused. I am at a loss to see how the petitioner will be made liable under Section 141(1) of the Negotiable Instruments Act which deals with commission of offence by companies and partnership firms or association of

individuals. In view of the conceded position in the complaint that the 1st accused is a proprietory concern which is legally distinguishable with that the of the proprietor, the maintainability of the complaint against the petitioner who is the Senior Manager and employee of the 2nd accused is very much in doubt. The order of stay presently passed is made absolute. The petitioner is permitted to make an application before the Magistrate concerned through his Advocate who is already engaged in Bombay seeking a discharge/dropping of the proceedings as against him. If such an application is received, the learned Magistrate will pass appropriate orders in accordance with law.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**